

David L. Rice
rice@millernash.com

September 9, 2002

VIA ELECTRONIC MAIL & FEDERAL EXPRESS

Ms. Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Subject: Notice of Ex-Parte Presentations

Application by Qwest Communications International, Inc. for Authorization
Under Section 271 of the Communications Act to Provide In-Region InterLATA
Service in the States of Colorado, Idaho, Iowa, Nebraska and North Dakota
WC Docket No. 02-148

Application by Qwest Communications International, Inc. for Authorization
Under Section 271 of the Communications Act to Provide In-Region InterLATA
Service in the States of Montana, Utah, Washington and Wyoming
WC Docket No. 02-189

Dear Ms. Dortch:

On September 9, 2002, Brooks Harlow and I, representing the Northwest Public Communications Council ("NPCC"), participated in a telephone conference with Monica Desai of the Wireline Competition Bureau. The purpose of the meeting was to discuss the comments NPCC filed in conjunction with the Arizona Payphone Association, the Colorado Payphone Association, and the Minnesota Independent Payphone Association ("Associations") in the above-referenced dockets. Mr. Harlow explained the Associations' position that Qwest has failed to comply with Section 276 of the Telecommunications Act, the FCC's related implementing orders, and the new services test. The participants also discussed a pending case involving the new services test in Oregon. Mr. Harlow explained the relevance of these issues to Qwest's pending Section 271 applications. Mr. Harlow sent Ms. Desai an e-mail with documents relevant to the conference call, which is attached.

Also on September 9, 2002, Mr. Harlow had a telephone conference with Jennifer McKee and Michael Carowitz of the Wireline Competition Bureau regarding the same

Marlene H. Dortch
September 9, 2002
Page 2

issues referenced above. Attached is the email from Mr. Harlow to Ms. McKee and Mr. Carowitz forwarding the same documents Mr. Harlow sent to Ms. Desai. Mr. Harlow also e-mailed these documents to Brian Tramont and Matthew Brill of Commissioner Kathleen Abernathy's office on September 9th. The e-mail enclosing the documents is attached.

Very truly yours,


David L. Rice

cc w/encls:	Bryan Tramont (Fed-Express)	Bruce Smith (e-mail/U.S. Mail)
	Matthew Brill (Fed-Express)	Jean Jewell (e-mail/U.S. Mail)
	Janice Myles (Fed-Express)	Penny Baker (e-mail/U.S. Mail)
	Qualex International, Portals II (Fed-Express)	Chris Post (e-mail/U.S. Mail)
	Yaron Dori, Hogan & Hartson (Fed-Express)	Patrick J. Fahn (e-mail/U.S. Mail)
	Steve Vick (e-mail/U.S. Mail)	Meredith Cohen (e-mail/U.S. Mail)
	Julie Orchard (e-mail/U.S. Mail)	Michael Carowitz (e-mail)
	Carole J. Washburn (e-mail/U.S. Mail)	Jennifer McKee (Fed-Express)
	Stephen G. Oxley (e-mail/U.S. Mail)	Elizabeth Yockus (Fed-Express)
	Ryan Harsch (e-mail/U.S. Mail)	Sharon Lee (Fed-Express)
	Monica Desai (Fed-Express)	Gary Remondino (Fed-Express)

Rice, David L.

From: Harlow, Brooks
Sent: Monday, September 09, 2002 7:35 AM
To: 'Monica Desai'
Subject: RE: Qwest 271, ex parte



Barber Order.pdf



OPUC errors
chart.doc

Further to our conversation in a few minutes, I am attaching two more

documents. The Word document gives a quick overview of how Qwest is successfully avoiding its obligation in Oregon to file New Services Test cost studies to demonstrate that it has leveled the playing field in the payphone market. It is a summary of the Oregon PUC's errors in accepting Qwest's arguments that it is not required to file cost studies, among other errors. The .pdf document is a court judge's recent ruling on the same issues.

I wish to stress that we are not seeking any substantive findings on payphone services rates, just that Qwest be required to prepare and file the proper cost studies that it has refused to file since 1996. As in Colorado, the proper rates should easily be determined by the states when Qwest complies with its filing obligation. The attached order illustrates why we need FCC help. Most of the states just don't, or won't "get it."

I look forward to speaking with you in about 30 minutes.

Brooks E. Harlow
Voice: 206-777-7406
Fax: 206-622-7485
<mailto:harlow@millernash.com>
<http://www.millernash.com>

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-----Original Message-----

From: Harlow, Brooks
Sent: Friday, September 06, 2002 7:34 AM
To: 'Monica Desai'
Subject: RE: Qwest 271, ex parte

Great, thank you. I forgot to mention that I converted all times to Eastern. So if that's the way you read it, then I have you down for 11 a.m. Eastern (8 for me). I can just call your office, unless you want to include other people at your end. If so, it's easy for me to get a bridge number.

Our previously filed comments are attached, as you requested.

Have a good weekend.

Brooks E. Harlow
Voice: 206-777-7406
Fax: 206-622-7485
mailto:harlow@millernash.com
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-----Original Message-----

From: Monica Desai [mailto:MDESAI@fcc.gov]
Sent: Friday, September 06, 2002 4:03 AM
To: Harlow@millernash.com
Subject: RE: Qwest 271, ex parte

Good morning. I am happy to talk to you on Monday at 11:am. Would you send me a copy of your comments? Somehow the attachment got lost on the e-mail chain.

Will there be a dial-in number for the call, or would you like to just call my office? My number is (202) 418-7419.

Also - are your comments related to Qwest I or Qwest II? I am only working on Qwest I.

I look forward to talking to you!

Thanks.

Monica Desai

>>> "Harlow, Brooks" <Harlow@millernash.com> 09/05/02 05:42PM >>>
Thank you for your prompt reply. I look forward to talking to Monica.

Brooks E. Harlow
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http://www.millernash.com

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-----Original Message-----

From: Daniel Gonzalez [mailto:DGONZALE@fcc.gov]
Sent: Thursday, September 05, 2002 2:41 PM
To: Harlow@millernash.com
Cc: Monica Desai; Vivette Hart
Subject: Re: Qwest 271, ex parte

Brooks,

Sorry, I am recused on this proceeding. Monica Desai is handling this issue for Commissioner Martin. I am forwarding this to Monica. Thanks.
-Dan.

>>> "Harlow, Brooks" <Harlow@millernash.com> 9/5/2002 5:17:11 PM >>>
Hi, Dan. You may remember me from the FCBA's Kingsmill Seminar last May.
I

practice telecom law in the "other" Washington (the state).

I talked to Brian Tramont a few weeks ago about an issue we have for our client, the Northwest Public Communications Council. He suggested we contact your office as well. We would like to try to set up an ex parte in the near future, by phone. The one with Brian took less than half an hour. I have attached our most recent comments filed with the FCC to give you a quick idea what our issue is. We have a new development to discuss as well.

I can be available tomorrow afternoon, next Monday 11 am - 1 pm, Tuesday until 4 pm, and all day next Wednesday. If none of these work, I'll be happy to go back to my calendar.

Brooks E. Harlow
Voice: 206-777-7406
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<http://www.millernash.com>

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<<Joint payphone comments 8-1-02, WA, MT.pdf>>

I. SUMMARY OF OPUC ERRORS

The OPUC committed many errors of law that directly violate the FCC new services test requirements. The following chart summarizes some of the OPUC's most obvious errors. The OPUC's erroneous *Final Order* findings are on the left and the FCC's statements directly contradicting them are on the right.

OPUC Erroneous Finding	Actual FCC Requirements
"We disagree" that "in order to comply with the new services test, Qwest must submit studies and cost data to the OPUC." ¹	No, the "requisite cost-support data must be submitted to the individual states." ²
Qwest rates meet the new services test because the overhead ratio Qwest provided is "reasonable." ³	No, the new services test requires more than just an overhead ratio. Qwest must set PAL rates by adding its direct costs to an appropriate level of overhead costs set according to one of three methodologies, which it did not do. ⁴
Qwest's PAL rates meet the new services test even though Qwest set "the rates for PAL access line service consistent with business line rates." ⁵	No, the FCC specifically forbids Qwest from "apply[ing] to payphone line service rates whatever [overhead] markup over direct costs is incorporated in their business line rates." ⁶

¹ R. at 5825 (*Final Order*).

² Memorandum Opinion and Order, FCC 02-25 at n.74 (2002) ("*New Services Order*"); see Order, 12 FCC Rcd. 21,370 at ¶ 18 (1997) ("*April 15th Waiver Order*").

³ R. 5825 (*Final Order*).

⁴ *New Services Order* at ¶ 58; see Order, 9 FCC Rcd. 440 at ¶ 44 (1993) ("*ONA Order*").

⁵ R. 5819 (*Final Order*).

⁶ *New Services Order* at ¶¶ 55-56.

OPUC Erroneous Finding	Actual FCC Requirements
Qwest's high overhead costs for PAL are acceptable because "the FCC and state commissions have determined that a range of overloading up to 4.8 times direct costs is reasonable." ⁷	No, the FCC held that an overhead loading up to 4.8 times direct costs is reasonable only for certain low cost services, which PAL is not. The FCC added that "[w]e do not find that our determination here concerning overhead loadings for . . . provision of payphone features and functions will necessarily be determinative in evaluating overhead loadings for other services," such as PAL. ⁸
Qwest does not need to subtract the subscriber line charge ("SLC") from its PAL rates because Qwest's behavior is "not discriminatory." ⁹	No, "a BOC must reduce the monthly [PAL] per line charge determined under the new services test by the amount of the applicable federally tariffed SLC." ¹⁰
CustomNet, a Qwest call screening service, is not subject to the new services test because it is "available to any class of subscriber." ¹¹	No, the new services test applies to all "unbundled features and functions . . . such as . . . call screening," ¹² even if they are offered to all subscribers.
Qwest does not need to file "cost data and overhead for CustomNet." ¹³	No, the requirement to file cost data and set rates based on direct and overhead costs applies to all "unbundled features and functions provided to others or taken by a LEC's [payphone] operations," ¹⁴ including call screening services like CustomNet.

⁷ R. 5825 (*Final Order*).

⁸ Memorandum Opinion and Order, 12 FCC Rcd. 17,996 ¶ 13 (1997) ("*Payphone Features Order*").

⁹ R. 5826 (*Final Order*).

¹⁰ *New Services Order* at ¶¶ 60-61.

¹¹ R. 5826 (*Final Order*).

¹² *Order*, 12 FCC Rcd. 20,998 at ¶ 18 (1997) ("*April 4th Waiver Order*").

¹³ R. 5826 (*Final Order*).

¹⁴ *April 4th Waiver Order* at ¶ 18.



**CIRCUIT COURT
THIRD JUDICIAL DISTRICT**

MARION COUNTY COURTHOUSE
100 HIGH ST. NE
PO BOX 12869
SALEM, OREGON 97309-0869

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AUG 29 2002

MILLER NASH LLP

Richard D. Barber, Judge
(503)588-5033
Fax: (503)589-3239

August 26, 2002

Mr. Brooks Harlow
Attorney At Law
4400 Two Union Square
601 Union Street
Seattle WA 98101-1367

Mr. Jay P. Nusbaum
Attorney At Law
1211 SW 5th Ave
Suite 1500
Portland OR 97204

Mr. Jason W. Jones
Assistant Attorney General
1162 Court St NE
Salem OR 97310

**Re: NWPCC v. OPUC
No. 02C12247**

Counsel:

On August 21, 2002, the court heard oral arguments of counsel on this appeal and action to Set Aside Findings and Orders of the OPUC.

The arguments in all respects were persuasive and well prepared.

The issues were taken under advisement and the memoranda of counsel have been carefully considered along with the oral arguments.

The court finds that the New Services Test is a flexible test to determine if rates are cost-based with reasonable overhead.

The court also finds that the test was applied by the OPUC, though not in the strict manner suggested by the plaintiff.

Further, the court finds that the CustomNet is not a payphone-specific service and is not subject to the New Service test.

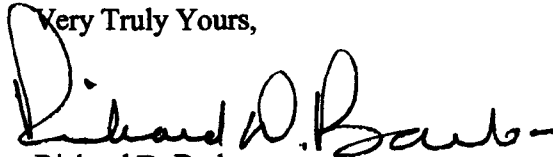
Generally speaking, it appears that the findings and conclusions of the Commissions are based upon substantial evidence and that the plaintiff has not sustained its burden of proof to set aside the rulings.

Therefore, the court affirms the Final Order and the Reconsideration Order.

Counsel will please arrange for the removal of the exhibits within ten days. This applies particularly to the three boxes furnished by OPUC.

Counsel will also please consider and advise of the effect which this ruling has upon the companion refund case.

Very Truly Yours,

A handwritten signature in black ink, appearing to read "Richard D. Barber", with a long horizontal flourish extending to the right.

Richard D. Barber
Circuit Court Judge

RDB/nch

Rice, David L.

From: Harlow, Brooks
Sent: Monday, September 09, 2002 9:47 AM
To: 'jmckee@fcc.gov'
Cc: 'mcarowit@fcc.gov'
Subject: Qwest 271, ex parte



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chart.doc

Thank you for your call. I understand how busy you and Michael must be.

As we discussed, I am attaching two more documents. The Word document gives a quick overview of how Qwest is successfully avoiding its obligation in Oregon to file New Services Test cost studies to demonstrate that it has leveled the playing field in the payphone market. It is a summary of the Oregon PUC's errors in accepting Qwest's arguments that it is not required to file cost studies, among other errors. The .pdf document is a court judge's recent ruling on the same issues.

I wish to stress that we are not seeking any substantive findings on payphone services rates, just that Qwest be required to prepare and file the proper cost studies that it has refused to file since 1996. As in Colorado, the proper rates should easily be determined by the states when Qwest complies with its filing obligation. The attached order illustrates why we need FCC help. Most of the states just don't, or won't "get it."

From the standpoint of Qwest I, since Qwest has filed cost studies in Colorado our real concern is that Qwest I not become precedent on the PAL issue for purposes of Qwest II.

If you or Michael wish to talk further, please let me know.

Brooks E. Harlow
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Munnerlyn, Carol J.

From: Harlow, Brooks
Sent: Monday, September 09, 2002 10:04 AM
To: Bryan Tramont (E-mail); 'mbrill@fcc.gov'
Subject: Qwest 271, ex parte



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Thank you for your voicemail last week. I'll talk with Matt when and if his schedule permits. I think I left him a voicemail to call me if he can. If not, Matt, feel free to call if you get a chance. I understand that your schedule may not permit even a quick call, however.

The reason I called was for a quick update regarding the "other remedies" (besides 271) that we discussed last month. I have attached two more documents that illustrate why going to the states is not viable. The Word document gives a quick overview of how Qwest is successfully avoiding its obligation in Oregon to file New Services Test cost studies to demonstrate that it has leveled the playing field in the payphone market. It is a summary of the Oregon PUC's errors in accepting Qwest's arguments that it is not required to file cost studies, among other errors. The .pdf document is a court judge's recent ruling on the same issues.

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If you or Matt wish to talk further, please let me know.

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